

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

In the Matter of )

Phillips Manufacturing, Inc )  
4404 S 76th Cir )  
Omaha, NE 68127 )

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Docket No. EPCRA-07-2004-0105  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

**CONSENT AGREEMENT AND FINAL ORDER**

The United States Environmental Protection Agency (EPA or Complainant) and Phillips Manufacturing, Inc (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules).

**I. PRELIMINARY STATEMENT**

A. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045, and 40 C.F.R. Part 22.

B. This Consent Agreement and Final Order (CAFO) serves as notice that EPA has reason to believe that Respondent violated EPCRA Section 313, 42 U.S.C. § 11023, and the regulations promulgated thereunder and codified at 40 C.F.R. Part 372, governing the submission of toxic chemical release forms (Form R) by owners and operators of covered facilities.

C. Respondent stipulates that EPA has jurisdiction over the subject matter of this CAFO, and Respondent waives any jurisdictional defenses it may have with respect to execution or enforcement of this CAFO.

D. Respondent hereby waives its right to a judicial or administrative hearing, to otherwise contest any issue of law or fact set forth in this CAFO, and its right to appeal the final order.

E. This CAFO is the result of Respondent's participation in EPA's National Community Right-to-Know Initiative. The Community Right-to-Know Initiative focused on Respondent and other facilities that recently submitted Form Rs beyond the time necessary for EPA to release the data to the public through its annual Public Data Release. EPA satisfies its mandate to make annual toxic chemical release and transfer data available for public scrutiny by annually publishing the Public Data Release and State Fact Sheets, and providing a publicly accessible database on the Internet known as Envirofacts. According to an EPA analysis, each year the Public Data Release and State Fact Sheets are missing millions of pounds of toxic chemical releases due to the growing number of late submissions. This deprives the community of its right to know, defeating the purpose of EPCRA Section 313.

## **II. EPA FINDINGS OF FACT**

A. Respondent is a corporation doing business in the State of Nebraska.

B. Respondent is/was the owner or operator of the following facility/facilities at the time of the violations alleged herein:

PHILLIPS MFG. CO.  
4404 S. 76TH ST.  
OMAHA, NE 68127

C. At the time of the violations alleged herein, Respondent had 10 or more full-time employees at the above facility/facilities.

D. At the time of the violations alleged herein, Respondent's above facility/facilities were properly and primarily classified in Standard Industrial Classification (SIC) Code 3429, which is a covered SIC Code as specified at 40 C.F.R. § 372.22(b).

E. Respondent manufactured, processed, or otherwise used the following chemicals, at the following facility/facilities, in the reporting years specified below:

FACILITY	TRIFID	CHEMICAL	REPORTING YEAR
PHILLIPS MFG. CO. 4404 S. 76TH ST. OMAHA, NE 68127	68110PHLLP2828N	DICHLOROMETHANE	2000
PHILLIPS MFG. CO. 4404 S. 76TH ST. OMAHA, NE 68127	68110PHLLP2828N	TRICHLOROETHYLENE	2000
PHILLIPS MFG. CO. 4404 S. 76TH ST. OMAHA, NE 68127	68110PHLLP2828N	TRICHLOROETHYLENE	2001

F. The chemicals identified above, in Paragraph II.E., are listed at 40 C.F.R. § 372.65, and therefore subject to EPCRA Section 313.

G. The chemicals identified above, in Paragraph II.E., were manufactured, processed, or otherwise used in excess of the threshold amounts specified at 40 C.F.R. § 372.25, and/or 40 C.F.R. § 372.28.

H. Respondent failed to timely submit a Form R for the chemicals and years specified above, in Paragraph II. E., to the Administrator of EPA by July 1 of the applicable years.

### III. EPA CONCLUSIONS OF LAW

A. EPCRA Section 313 and 40 C.F.R. §§ 372.22 and 372.30, require the owner or operator of a facility to complete and submit a toxic chemical release inventory form (Form R or

Form A) to the Administrator of EPA and to the State in which the subject facility is located by July 1 for the preceding calendar year for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during that preceding calendar year provided the following elements are satisfied:

1. The facility has 10 or more full-time employees; and
2. The facility is in a SIC code, which is defined as follows: major group 10 (except 1011, 1081, 1094); 12 (except 1241); 20-39; 4911, 4931, 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C, 42 U.S.C. § 6921 *et seq.*); 5169; 5171; and 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and
3. The facility manufactured, processed, or otherwise used a toxic chemical listed under EPCRA Section 313(c) and 40 C.F.R. § 372.65, in excess of the threshold quantity established under EPCRA Section 313(f) and 40 C.F.R. § 372.25, and/or 40 C.F.R. § 372.28, during the calendar year.

B. As set forth at EPCRA Section 313(f) and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds, and the reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds.

C. Respondent is, and was at all times relevant to the CAFO, a person as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11023.

D. At the time of the violations alleged herein, Respondent was the owner or operator of the facility/facilities identified in Paragraph II.E. as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

E. At the time of the violations alleged herein, Respondent had 10 or more full-time employees at the facility/facilities identified in Paragraph II.E., as defined by 40 C.F.R. § 372.3.

F. At the time of the violations alleged herein, Respondent's facility/facilities identified in Paragraph II.E. were classified in a covered SIC Code as described at 40 C.F.R. § 372.22.

G. Respondent's facility/facilities identified above in Paragraph II.E, manufactured, processed or otherwise used a chemical listed under EPCRA Section 313(c) and 40 C.F.R. § 372.65, in excess of the applicable threshold quantity established under EPCRA Section 313(f) and 40 C.F.R. § 372.25, and/or 40 C.F.R. § 372.28, during the calendar years specified.

H. Respondent's failure to timely submit a complete and accurate Form R for the chemicals, reporting years, and facility/facilities specified above in Paragraph II.E., by July 1 of the applicable reporting year, is a violation of EPCRA Section 313, and of the requirements of 40 C.F.R. Part 372.

#### **IV. PENALTIES AND FEES**

A. Respondent agrees to pay a civil administrative penalty of \$5,000 per facility for the violation(s) alleged in Paragraphs II and III in accordance with the terms of this CAFO.

B. Respondent is encouraged to disclose any additional violations of any media not identified in this CAFO through EPA's Incentives for Self Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy), or EPA's Small Business Compliance

Policy (Small Business Policy). Both policies are available on the Internet at:  
<http://www.epa.gov/compliance/incentives/auditing/index.html> and  
<http://www.epa.gov/compliance/incentives/smallbusiness/index.html>, respectively. Initiating audits in response to this CAFO will not disqualify Respondent under the Audit Policy's requirement for "voluntary Discovery," or "Discovery and Disclosure Independent of Government or Third-Party Plaintiff." However, any future instances of late reporting to the TRI in the next three years will not qualify for penalty relief under either the Audit or Small Business Policies.

#### **V. TERMS OF SETTLEMENT**

- A. For purposes of this proceeding, Respondent admits that Complainant has jurisdiction over the subject matter identified in Sections I through IV of this CAFO.
- B. Respondent neither admits nor denies EPA's findings of fact and conclusions of law set forth in Sections II and III of this CAFO.
- C. The terms of this CAFO constitute a full settlement of this proceeding with respect to the administrative claims alleged in Sections II and III. However, nothing in this CAFO is intended, nor shall it be construed, to operate in any way to resolve any criminal liability of Respondent or its employees or to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.
- D. Respondent consents to the issuance of the Final Order hereinafter recited, and consents to the payment of the civil penalty as set forth in the Final Order and Section IV of this CAFO.

## **VI. OTHER MATTERS:**

A. Nothing in this CAFO shall relieve the Respondent from complying with any provision of EPCRA or any other applicable provisions of federal, state, or local law, except as stated herein.

B. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO (or one or more of its terms and conditions) is held invalid, or is not executed by all of the signatory parties in identical form, then the entire CAFO shall be null and void. However, Respondent may make administrative changes to this CAFO, including altering the docket number.


C. Complainant reserves the right not to accept, in any circumstance, a CAFO containing any changes, additions, deletions, or substitutions. Furthermore, Complainant reserves the right not to accept, in any circumstance, an incomplete CAFO.

D. Respondent and Complainant agree to bear their own respective costs and attorney's fees.

E. The provisions of the Consent Agreement shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the parties represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

**WE AGREE TO THIS:**


For Respondent:

  
OFFICIAL NAME: GEORGE KUBAT  
TITLE: PRESIDENT  
Date 4/12/04

ATTORNEY NAME (Optional):  
TITLE:

Date \_\_\_\_\_

For Complainant:

  
OFFICIAL NAME: Julie M. Van Horn  
TITLE: Senior Assistant Regional Counsel  
Date 19 April 2004

OFFICIAL NAME:  
TITLE:

Date \_\_\_\_\_



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

In the Matter of )

Docket No. EPCRA-07-2004-0105

Phillips Manufacturing, Inc )

4404 S 76th Cir )

Omaha, NE 68127 )

**FINAL ORDER**

Pursuant to the provisions of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of \$5,000 within thirty (30) days from the execution of this Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

EPA - Region VII c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, PA 15251

The check shall reference the name of Respondent and the Docket Number EPCRA-07-2004-0105.

2. A copy of the check must be sent to:

Julie M. Van Horn  
Senior Assistant Regional Counsel U.S. EPA - Region 7  
901 N. 5th Street  
Kansas City, KS 66101

Regional Hearing Clerk  
U.S. Environmental Protection Agency Region VII  
901 N. 5th Street  
Kansas City, KS 66101

3. Respondent's failure to pay any portion of the civil penalty assessed herein in accordance with the provisions of this Order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest thereon at the applicable statutory rate. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty if it is not paid within thirty (30) calendar days of Respondent's receipt of the fully executed Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2). In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d).

4. The terms of the foregoing Consent Agreement are hereby ratified and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the foregoing terms of settlement.

**IT IS SO ORDERED.** This Final Order shall become effective immediately.

By: Robert Patrick  
Robert Patrick  
Regional Judicial Officer

Date April 30, 2004

IN THE MATTER OF Phillips Manufacturing, Inc., Respondent  
Docket No. EPCRA-07-2004-0105

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Julie Van Horn  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

Phillips Manufacturing, Inc.  
4404 S 76<sup>th</sup> Circle  
Omaha, Nebraska 68127

Dated:

5/4/04

  
Kathy Robinson  
Regional Hearing Clerk